

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BEN GORDON, G7 DEVELOPMENT,)
INC., and BG4, INC.)

Plaintiff,)

vs.)

VITALIS PARTNERS, LLC; LARRY)
HARMON & ASSOCIATES, P.A.; KC)
DEVELOPMENT CO. LLC; LARRY)
HARMON; and KENNY CRUZ)

No. 07 C 6807

Defendants.

**COUNTER-DEFENDANT'S MOTION TO DISMISS COUNTS II – IV OF
COUNTER-PLAINTIFFS' COUNTERCLAIM**

Counter-Defendant, BEN GORDON, (collectively, "Gordon"), by and through his attorneys, SPELLMIRE & SOMMER, and pursuant to Federal RuleS of Civil Procedure 12(b)(6), 9 and 8 submit this Motion to Dismiss the Counter-Plaintiffs' Counterclaim.

1. Counts II-IV of Counter-Plaintiffs' Counterclaim for Defamation, Commercial Disparagement and Tortious Interference with Prospective Business Advantage are fatally flawed and must be dismissed.

2. Each of these three counts fails to state a claim as they are all based upon non-specified phantom statements to unidentified third parties.

3. Binding law provides that this Court must apply the substantive law of California to these claims as well as federal pleading sufficiently requirements. Under these applicable principles, it is clear that Counter-Plaintiffs have failed to state a claim upon which relief can be granted for all three of these counts.

4. Accordingly, this Court should enter an Order dismissing the Defendants' counterclaim with prejudice.

5. The Plaintiffs incorporate all of the arguments and authorities contained in their Memorandum in Support of this Motion filed simultaneously herewith.

WHEREFORE, GORDON respectfully requests that this Honorable Court enter an Order dismissing with prejudice Counts II, III and IV of the Counter-Plaintiffs' counterclaim.

_____/s/_____
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